

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY MICHAUD,

Defendant.

NO. CR15-5351RJB

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION TO MODIFY
APPEARANCE BOND

The government, joined by U.S. Pretrial Services, opposes Defendant Jay Michaud's request for a modification of his appearance bond. Dkt. 214. Specifically, his request to substitute weekly telephonic meetings for active GPS monitoring is unwarranted and impractical. For the reasons that follow, his request should therefore be denied.

First, the defense incorrectly states the current status of Michaud's level of GPS monitoring. He is currently subject to active GPS monitoring with a curfew. *See* Dkt. 135. Indeed, a curfew is mandated under the Adam Walsh Act because Michaud is charged with a violation of 18 U.S.C. § 2252(a)(2). *See* 18 U.S.C. § 3142(c)(1)(B) (requiring those charged with 18 U.S.C. § 2252(a)(2) to be subject to a curfew under § 3142(b)(1)(B)(vii)). Thus, at a minimum, Michaud's bond must require that he comply with a curfew.

1 *Second*, and more important, Michaud’s suggested alternative to GPS monitoring
2 is impractical and will impede Pretrial’s ability to efficiently and effectively monitor
3 Michaud’s compliance with his bond. With location monitoring, Pretrial can easily
4 ascertain whether Michaud is in compliance with his curfew and verify that he does not
5 travel to any prohibited location—such as, for example, a school, a park, or other location
6 where minors congregate. And should Pretrial identify some issue based on its review of
7 the GPS data, it can quickly address that matter with Michaud and/or defense counsel.
8 This is not just an abstract proposition: on a daily basis, the location monitoring
9 specialist reviews Michaud’s location data to ensure he has not traveled to a prohibited
10 location or violated his curfew. A weekly telephone call would hardly prove an adequate
11 substitute for real-time location data. It would be no substitute at all.

12 *Third*, while an ankle bracelet might be an inconvenience for Michaud, Michaud
13 makes no effort to explain why continued GPS monitoring is such an impediment to his
14 day-to-day life. If there are particular challenges posed by his current restrictions, it
15 would seem a useful first step to raise those with Pretrial (and the Court if necessary) to
16 see if some accommodation can be made. Removal of the ankle bracelet will not, after
17 all, free Michaud of his curfew or permit him to travel to locations where minors
18 congregate. Rather, it will only deprive Pretrial of any meaningful tool for verifying that
19 he is complying with his bond.

20 *Finally*, Michaud’s observation that district courts have broad discretion in
21 fashioning release conditions, even where those conditions are mandated by the Adam
22 Walsh Act, is correct but not particularly relevant. *See* Dkt. 214, at p. 2 (citing *United*
23 *States v. Kennedy*, 327 F. App’x 706 (9th Cir. 2010)). Whatever its meaning, “electronic
24 monitoring” surely encompasses something beyond a weekly telephonic conference
25 between a defendant and the Pretrial officer. That § 3142 does not specify whether
26 “electronic monitoring” be “continuous or limited to a particular locality,” *id.* at 707,
27 hardly supports the notion that it can be accomplished simply through a weekly
28 teleconference in which the defendant reports his or her own efforts at self-monitoring.

1 In short, Michaud asks this Court to modify his bond in a way that will render it all
2 but unenforceable in certain respects. And he does so with little explanation why the
3 current conditions are so onerous as to justify such a radical action. The government
4 agrees with Pretrial that the current location monitoring and curfew conditions should not
5 be altered and that Michaud's motion should be denied.

6 DATED this 1st day of July, 2016.

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8 Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant.

s/Emily Miller

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